

CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-161

Applicant: 22nd District Agricultural Association Agent: BRG Consulting, Inc.

Description: Expansion of the existing grandstand/clubhouse structure over an approximately 17,000 sq.ft. portion of the existing paved area between the grandstand and racetrack, to provide additional, permanent box seats and dining tables.

Lot Area	336 acres
Parking Spaces	14,000 (maximum, depending on event)
Zoning	Fairgrounds/Racetrack
Plan Designation	Fairgrounds/Racetrack

Site: Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, San Diego County. APN 298-271-03

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: The project was initially scheduled on the April 8-11, 2003 Commission meeting, but was continued at the request of the applicant to respond to the recommendation of denial. **Due to Permit Streamlining Act requirements, the Commission must act on the application at the August Commission hearing.**

The applicant has recently submitted detailed new information for staff to review. The new information supports the applicant's position that the requested facilities will not increase the intensity of use of the site, because seated patrons occupy more square footage per person than the standing patrons that would otherwise occupy the area. Thus, there is actually a decrease in the number of people that can be accommodated between the existing grandstand structure and the racetrack with the proposed additions in place, and, as such, the proposal will not result in the need to increase use of the south and east overflow parking lots. Therefore, staff is recommending approval of the proposed improvements with special conditions addressing parking and traffic, and potential future expansions of the grandstand footprint.

As a result of review of this permit application, staff has become aware of unauthorized expansion of the grandstand structure since its approval in CDP #6-90-266. Permanent additions accommodating several hundred persons, in the form of box seats and dining terraces, have already been built on the north side of the clubhouse portion of the structure. The application has been modified to include these facilities in the subject permit action, and all numbers, descriptions, calculations, etc. in this staff report include these facilities.

Substantive File Documents: 1985 Master Plan Update, draft 2000 Master Plan Update, and draft 1990 Public Works Plan; CCC Files: #F9412; #6-81-302; #6-84-525; #6-90-266; #6-99-031; #6-99-094; #6-02-020

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-02-161 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of

the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Parking and Traffic Monitoring Program PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval by the Executive Director, the following information which shall be incorporated into the parking and traffic monitoring program required pursuant to CDP #6-90-266 (rebuilding of grandstand complex) and implemented by the applicant in 2003 and subsequent years:

a. A full calendar of events occurring on the Fairgrounds during the previous calendar year, listing the dates the events were held, average and peak attendance figures of each event, venues for each event and projected future events and increases in attendance.

b. A base line, established using data from calendar year 2002, that identifies all events that utilized the east and south overflow parking lots, the nature of use, the number of days the lots were used, the area and percentage of each lot used, estimate of the number of parking spaces provided by lot per day of use, and off-site parking and shuttle arrangements in place on each day during the 2002 fair and race season.

The permittee shall implement the updated monitoring program in accordance with the requirements of CDP#6-90-266. The annual monitoring reports required pursuant to CDP #6-90-266 shall be submitted by the applicant and shall include the above stated information for 2003 and subsequent years, in addition to the traffic circulation and on and off-site parking information. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final project plans of all proposed improvements, including those already constructed without a permit, and including a delineation of the entire project footprint that shall be in substantial conformance with the footprint shown on the Froehlich, Kow & Gong Architects, Inc. Grandstand and Clubhouse plans, dated

November 5, 2002. No changes to, or expansion of, the approved final plans, including the footprint, shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The applicant is proposing to make permanent additions to its existing grandstand facilities, constructed pursuant to Coastal Development Permit (CDP) #6-90-266, that will provide additional seating for the existing patrons. The improvements include constructing new box seats and providing additional dining tables on stepped terraces for enhanced viewing of, and sit-down dining service during, horse-racing and other events. The proposed facilities would be located trackside of the existing structure, in front of both the grandstand (western) and clubhouse (eastern) portions of the building. The project has been described by the applicant as primarily replacing temporary facilities with permanent ones, as the improvements would cover approximately 17,000 sq.ft. of the existing paved apron between the grandstand building and the racetrack. This is an area periodically occupied by seasonal bleachers and/or temporary seating/dining facilities and is also part of the area where spectators currently stand or bring lawn chairs to view the events.

In 1991, the Commission approved the current grandstand/clubhouse structure in CDP #6-90-266. The Commission authorized the grandstand to include approximately 15,000 seats. Pull-out bleachers built into the grandstand basement were part of the original permit for the grandstand. It is estimated that the bleachers in front of the entire grandstand structure could accommodate an average of about 900 people when fully extended. The pull-out bleachers were built into the grandstand basement as proposed, and used during the first few seasons after construction was complete.

Although the bleachers still remain in the basement of the grandstand structure, the applicant has indicated that their mechanism failed after a few seasons and has since replaced the pullout bleachers with formal grandstand additions in front of the clubhouse area and with informal/temporary seating and dining facilities in front of the grandstand section west of horse walk. None of these replacement facilities were authorized by the Commission in the past, but the formal additions in front of the clubhouse section are included in the subject permit for after-the-fact authorization.

Based on pictures submitted by the applicant, and other, recently submitted detailed information, the unauthorized permanent additions in front of the clubhouse can accommodate approximately 524 patrons. Including the temporary seating and dining facilities north of the grandstand section, and/or use of temporary bleachers, the total seating capacity on the apron area is currently approximately 948 patrons. The proposed additions/extensions would accommodate another approximately 1,138 people, bringing

the total amount of seating capacity on the apron to 1,818. This will leave 64,846 sq.ft. of open apron area, estimated to accommodate about 7,205 standing patrons.

The current application requests approval for both the proposed future grandstand expansion, and the previous, permanent additions to the clubhouse area of the grandstand. Because the proposed expansion (including the after-the-fact elements) represents structural improvements, and changes the intensity of use of the facility, the proposed development requires a CDP pursuant to the Commission's regulations regarding additions to existing structures. *See* 14 C.C.R. § 13253(b)(7).

The project site is geographically within the City of Del Mar, which has a certified LCP and issues its own coastal development permits. However, the Fairgrounds was principally built on filled tidelands. Thus, the site is within the Coastal Commission's area of original jurisdiction, with Chapter 3 of the Coastal Act being the standard of review for permits. The Fairgrounds planning documents, which include a 1985 Master Plan Update, draft 1990 Public Works Plan and draft 2000 Master Plan Update, and the Del Mar LCP are used for guidance.

2. Environmentally Sensitive Lands/Parking. The following Chapter 3 policies of the Coastal Act are most applicable to this development, and state, in part:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ...

Virtually the entire Fairgrounds property was created by filling tidelands back in the 1930's. Although most of the site is now developed with a variety of recreational venues, including the subject grandstand structure, there are several areas still containing seasonal

wetland resources, including the east and south overflow parking lots and much of the driving range at the Surf and Turf facility east of Jimmy Durante Boulevard. In addition, all of these areas are within the 100-year floodplain of the adjacent San Dieguito River and experience periodic inundation during average winter rainy seasons. There are no sensitive habitats or wetland resources on the specific project site, but intensification of use of the on-site facilities, even just an incremental intensification, can directly affect use of the overflow parking lots which can result in cumulative adverse impacts to the wetland resources on the parking lots and to the adjacent environmentally sensitive habitat within the San Dieguito River and its environs. Adjacent resources include both wetlands and uplands and are actively used by several sensitive species, including the Belding's savannah sparrow.

Commission Concerns with Fairgrounds Intensity of Use

Because of the presence of wetlands, and their use by endangered species, the Commission is concerned with any development that may result in incremental increases in the use of the two unimproved overflow lots. A brief history of these lots will explain this position

Over the years, there have been many permits and staff reports that address protecting the resources of the south overflow lot (SOL), including the potential for restoring its historic use as a least tern nesting site. As new facilities have been constructed, and the number of events increased, the fairgrounds has placed more and more dependence on the use of this lot for seasonal parking, storage of materials and truck trailers, and for other uses. The applicant first proposed construction of an infield tunnel connecting the original grandstand to the infield area in the middle of the racetrack to accommodate additional patronage in 1980. CDP #F9412 was approved by the Regional Commission, appealed to the State Commission, and ultimately withdrawn by the applicant. In January, 1982, the applicant resubmitted the proposal (CDP #6-81-302), which was initially denied for planning concerns but later approved on reconsideration. The permit included a special condition requiring that parking on the SOL cease, and that the 16-acre site be dedicated to the State Coastal Conservancy for wildlife enhancement. The applicant complied with the other conditions of approval, but filed an amendment request to delete the condition addressing the SOL. The Commission denied the request in May, 1984 but allowed that interim parking could continue on the SOL until April, 1986. At that time, use of the SOL only occurred during the summer, during the fair and racing seasons, and the fairgrounds did not host multiple events all year long.

Instead of pursuing another amendment, or complying with the dedication condition and implementing the permit, the applicant submitted a new permit application for the infield tunnel (pedestrian underpass) later in 1984 (CDP #6-84-525). The applicant sought to build the infield tunnel right away and continue to park on the SOL indefinitely, not only for another two years. The new application included a draft agreement between the applicant and the California Department of Fish and Game (CDFG) to provide alternate least tern nesting sites in exchange for continued use of the SOL for parking. The agreement required the applicant to provide a 4-acre interim nesting site on the SOL

while permanent sites were being sought within adjacent areas of the San Dieguito River Valley/Lagoon. With the draft agreement as part of the proposal, and a condition requiring submittal of the final, signed agreement, the Commission approved the permit, and the tunnel was built. The southernmost four acres of the SOL were bermed off from the remainder of the lot, to allow terns to colonize. Although the terns never returned to the site, between one and two acres of the SOL, which is immediately adjacent to the San Dieguito River, developed high quality salt marsh and is now used by the endangered Belding's savannah sparrow. The remaining two to three acres were converted to parking several years ago without provision of alternate wildlife habitat.

In conjunction with approval of CDP #6-84-525, the Commission adopted findings that make a strong argument against use of any portion of the SOL for parking. Specifically, the following findings were adopted:

“Under either the amendment request to delete specific dedication of the overflow lot or the current proposal to develop alternate least tern areas, the original land use conflicts are raised and still persist. Deleting specific dedication of the land or attempting to relocate the site both fail to acknowledge and implement the current Commission-approved Lagoon Enhancement Plan.”

“Further, the continued use of the southern overflow lot is in direct conflict with the currently-approved Lagoon Enhancement Plan which designates it for wildlife enhancement use as a least tern habitat. The permitted tunnel would directly place greater pressure to continue utilization of the affected parcel.”

“A number of rare and endangered plant and animal species utilize the wetland area of San Dieguito Lagoon including the endangered California least tern. An historical least tern nesting area exists on an area commonly known as the South Overflow Parking Lot. This area is presently used for parking during the Del Mar County Fair; the District seeks to continue this use on portions, if not all, of the affected parcel.”

“As stated above, the District desires to continue to use portions, if not all, of the affected parcel for overflow parking and the Updated Master Plan proposed continued parking on the site. However, this lot has been designated within the current approved San Dieguito Lagoon Resource Enhancement Program as a Least Tern habitat and nesting area. The Enhancement Program recommends that the 16+/- acre parcel between Jimmy Durante Blvd. and the north channel be protected by fencing and upgraded with a covering of light colored sand to enhance its use for least tern nesting. The parcel, currently used as an overflow parking lot for the racetrack and fairgrounds during the summer, is one which the terns have used for nesting in the past but with no success in the last ten years due to disturbance by domestic animals and people.”

At the time the Commission reviewed CDP #6-90-266, to replace the original grandstand with a new, significantly larger one, the issue of use of the unimproved overflow parking

lots was not considered as critically as it had been previously and has been in more recent permit reviews. However, that permit did include a special condition requiring the applicant to comply fully with the requirements of CDP #6-84-545 regarding least tern nesting sites. Compliance has not occurred to date. Moreover, wetland delineations of both parking lots were conducted in 1993, by a representative of the U.S. Army Corps of Engineers (ACOE); this resulted in the designation of the entire SOL as wetland and approximately a third of the east overflow lot (EOL) as well. The applicant contested this delineation and has since conducted its own wetland delineation of both areas. At this time, the infield tunnel has been constructed and the applicant has received the benefit of that permit; however, the required mitigation to address the impacts of that development on the SOL, i.e. alternative least tern nesting area, has not been provided.

On March 19, 21 and 23, 1996, the applicant conducted a survey (East Parking Lot Wetlands Delineation Report, dated May 10, 1996) and concluded that 1.7 acres of the 18-acre EOL (or just less than one tenth) is palustrine wetlands. In January, 1999, the applicant surveyed the SOL (South Parking Lot Wetlands Delineation, dated January, 1999) and concluded that a small area is wetlands, but the survey did not include any narrative quantifying the survey results. It appears the wetland in the south overflow lot in the area used for parking, as mapped by the applicant, is less than an acre in size, and could be as small as a quarter of an acre. The applicant states it used the federal protocol to conduct the surveys; in most cases, that protocol requires that all three wetland indicators (hydric soils, appropriate hydrology and wetland vegetation) must be present before a site is delineated as a wetland. There are exceptions for cases of known historic wetlands that have been artificially altered, where the presence of wetland vegetation is not required to identify a piece of land as a wetland. The discrepancy between the delineation done by the ACOE and that conducted by the applicant has not been explained. Additionally, the applicant's delineations have never been certified by the ACOE or any other resource agency.

However, both the Coastal Commission and the California Department of Fish and Game (CDFG) define wetland as lands that contain any one of the three indicators. The Coastal Act definition of "wetland" states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The Commission's regulations define "wetlands" as:

Land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. 14 C.C.R. § 13577.

The EOL was acquired by the applicant for parking purposes in 1967 to supplement the main parking lot during the annual fair and horseracing meet (i.e., from mid-June through mid-September each year). It is currently unimproved except for a paved tramway which partially circles the lot. The tramway was constructed several years ago pursuant to Coastal Development Permit #6-94-13, and was specifically designed to avoid patches of delineated wetlands identified by the Army Corps of Engineers (ACOE) in 1993. The applicant asserts that the parking lot is used by Fairgrounds patrons and employees throughout the year; however, the Commission has only acknowledged its pre-Coastal Act use during the Fair and racing season, and authorized its short-term use (about ten days) by permit for the Grand Prix, which was held at the Fairgrounds each fall for five consecutive years between 1987 and 1991.

The applicant's SOL survey identified at least one wetland indicator present at every surveyed transect point. Therefore, both the ACOE delineation and the applicant's data indicate that the entire south overflow lot is wetlands according to the protocol used in California (i.e., the Commission and CDFG definition of wetland). The field data sheets for the applicant's EOL survey include a number of transect points where one or two indicators were present outside of the area that the applicant delineated as wetland. This suggests that wetlands meeting the Coastal Act definition continue to exist outside the area delineated by the applicant. A current delineation is anticipated as part of the applicant's 2000 update of their Master Plan, but this information is not yet available. In the absence of a formal delineation according to California protocol, and in view of the facts presented above, the Commission finds it appropriate to take a conservative approach in evaluating the consistency of the proposed project with Chapter 3 policies of the Coastal Act.

Historically, both parking lots have been used by the applicant as a patron parking reservoir during the annual fair and thoroughbred race meet. Because use of the lots for parking for these two main yearly events predated the Coastal Act, the Commission has not challenged the continued use of this area for overflow parking during these events, even though all, or portions, of both lots are wetlands. To prepare the lot surfaces for parking each year, the applicant discs and levels both lots prior to the Mid-June start of the fair (the race meet follows almost immediately after the Fair closes). The preparation activities, and the parking itself, severely inhibit the ability of these areas to support growth of wetland vegetation and thus function successfully as wildlife habitat during that period.

Over time, the use of the Fairgrounds has expanded significantly, and the site now hosts multiple interim events every weekend all year long. The applicant asserts that the overflow lots, particular the EOL, are also used by patrons during many of these smaller events, especially when several occur simultaneously. The Fairgrounds consultant had previously submitted documentation demonstrating that the EOL was used by patrons on seventeen non-fair or racing days in 1998/1999. More current information just received for the year 2002 indicates that the EOL was used on 159 days, excluding the fair and race meet, during that calendar year. This represents an increase in use by over 900% in just three years' time, and includes use of the EOL at least once during each month of the

year. During that same period (2002), the SOL was used on only four days outside the fair and racing seasons; the four days consisted of a three-day car show in March and a Cinco de Mayo concert. The submitted data mostly represent weekend days, when there are typically several concurrent events taking place at the Fairgrounds. Either the main, paved parking lot is full, and vehicles directed into the overflow lots, or the lots themselves are being used as an event venue, such as a pumpkin patch and Christmas tree lot on the EOL and trailer/equipment storage on the SOL. The applicant has indicated that the EOL is also used by Fairgrounds employees, who are directed to park in this location to preserve areas of the main, paved parking lot for use by patrons, although there has been no formal authorization of this use by the Coastal Commission.

As stated, the Commission has acknowledged the cited historic use of the overflow lots for parking during the fair and race meet. In addition, in past permit actions, the Commission authorized use of this area for parking during the five years the Grand Prix was held at the Fairgrounds, and allowed the installation of an at-grade paved tram track outside ACOE delineated wetlands on the EOL. The tram is used during the annual fair and thoroughbred racing season to transport Fairgrounds patrons to the entrance ticketing windows. With these two exceptions, the Commission has not approved parking by patrons or employees or any other uses of these lots outside the fair and race seasons. The Commission only acknowledges use of the overflow lots during the Fair and race meet at the level of use, both spatially and in number of days, utilized prior to February 1973, when the permitting requirements of the Coastal Zone Conservation Act of 1972 (Proposition 20), the predecessor statute to the Coastal Act, took effect.

Any development which could potentially require use of the overflow lots beyond the pre-Coastal Act usage, for all of the resource reasons discussed above, raises Coastal Act consistency concerns. The EOL and SOL not only contain delineated wetlands but they currently serve as a buffer between the existing more intense uses within the fairgrounds and adjacent commercial development, and the sensitive habitat within the San Dieguito River Valley. Until an adequate, current wetlands delineation is done, there is no way to determine the extent of resources on the overflow parking lot sites, or whether any development that would result in formalizing or intensifying use of the lots would be consistent with the Coastal Act's resource protection policies.

Proposed Project's Level of Use

Initially, based on the information and general calculations submitted with the application, it was thought that the proposed grandstand additions would result in additional patronage to the fairgrounds (i.e., increased intensity of use), and that these new facilities would not only be used during the fair and races but at other times of the year as well. The proposed seating would be permanent additions available year round, and would replace temporary facilities available only on a seasonal basis. These facilities could be made available for other events, in particular concerts, throughout the year; although according to the applicant, at this time, concerts are only staged in the grandstand facilities during the fair because the linear seating and poor acoustics make for an unattractive concert venue. The Cinco de Mayo concert cited previously is the

only exception identified in the 2002 list of events. The concern is that any increase in intensity of use could result in expanded use of the EOL and SOL.

Recently submitted information includes significant refinements of the estimated numbers presented previously. The applicant has conducted a comparison of how many people can be accommodated in the area between the approved grandstand and the racetrack to demonstrate that the area will actually accommodate fewer people with the proposed project than with either the approved grandstand and retractable bleacher facilities or the previously unauthorized clubhouse additions and temporary box seats and dining terraces currently in use. The new calculations are based on the premise that seated patrons occupy an average of 15 sq.ft. of area per person, while standing patrons occupy only 9 sq.ft. of area per person. As formal seating is increased, the area left for standing patrons diminishes. Thus, a larger percentage of patrons is calculated at the 15 sq.ft. ratio than at the 9 sq.ft. ratio, resulting in the ability to accommodate fewer people overall. Therefore, construction of the proposed improvements, and after-the-fact authorization for the existing clubhouse additions, to increase seating area will not result in a greater number of patrons to the grandstand facility. Increases in patronage would typically be an increase in the intensity of use of a facility. The proposed new seating is needed to address the desires of existing patrons during the racing season. Although it could also be used during the fair, it is not really useable for other venues, as few, if any, other events occur in the grandstand.

As stated above, Section 30231 requires the biological productivity and quality of wetlands to be maintained and, where feasible, enhanced. Section 30233 limits fill and dredging of wetlands to eight identified purposes. Use of the overflow areas for parking degrades the wetlands that exist on the sites and is not one of the identified purposes in Section 30233(a). More frequent use of the lots and/or expansion of parking into areas not historically used for parking could adversely affect the adjacent environmentally sensitive habitat within the San Dieguito River and its environs which is inconsistent with Section 30240. Because the proposed development is not anticipated to increase use of these areas for parking, it is consistent with the cited resource protection policies of the Coastal Act.

Special Condition #1 addresses the existing traffic and parking monitoring program which has been in effect since the grandstand building was approved in 1990. The program currently requires data documenting on- and off-site parking, shuttle programs, and traffic circulation issues, but the information generated is primarily related to just the fair and racing season. The condition outlined herein would expand the program to also require a calendar of all yearly events similar in detail to what was submitted for 2002, including the events attendance, venues, and parking provisions, and also projections of known future events. As stated, the applicant has already provided much of this information for calendar year 2002, which will be used to establish a baseline for future years. With these added and clarified features, the yearly monitoring reports will allow the Commission to track attendance at repeating, or similar, events, and assess use of the overflow parking lots throughout the year.

In summary, the Commission has identified significant biological resource concerns with many projects proposed at the fairgrounds in recent years. These concerns are multiplied by the increase in the number of events, and increases in population, which have led to increased use of the SOL and EOL. Moreover, the applicant's own assessment in parking and traffic monitoring studies associated with the grandstand permit (6-90-266) predict that attendance at the two main events will increase by approximately 20,000 people between 1995 and 2010, based on population increases alone. It would be inappropriate to authorize any further development that increases parking demand until the applicant provides adequate documentation of the natural resources present on the overflow lots and within the adjacent area that could be adversely affected by parking demand associated with the proposed development. However, this particular proposal will not increase the intensity of use of any fairgrounds facility, nor result in additional use of the two overflow parking lots beyond their current use. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the cited Chapter 3 policies of the Coastal Act, and can thus be approved.

3. Hydrology – Floodway and Floodplain Issues. The following policies of the Coastal Act apply to the proposed development, and state, in part:

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard...

The majority of the Fairgrounds property is identified as being within the 100-year floodplain of the San Dieguito River. Historically, this area has been subject to inundation during some past winters, even though the applicant maintains earthen berms just north of the river channel along the south side of the SOL and EOL. Jimmy Durante Boulevard, which was realigned and raised in elevation during the 1980's pursuant to Coastal Development Permit #6-83-589, acts as a dike, protecting the more developed portions of the Fairgrounds (main parking lot and existing buildings) from flooding except during the most severe flood events. The site of the proposed grandstand additions is located within the main developed area, but the SOL and EOL, that could be adversely affected by any increases in intensity of use on the Fairgrounds property, are

located between Jimmy Durante Boulevard and the river, and are thus not afforded any protection by the road.

In past permit actions, the Commission has denied fill and construction of permanent structures in the floodplain pursuant to Section 30236 of the Coastal Act. The reason for prohibiting fill or structural improvements in this area is because such development would adversely affect the hydrology of the floodplain and would change the flow and drainage patterns of the affected area; thus, any form of filling the floodplain is a form of channelization. Under Section 30236, cited above, channelization is only allowed as part of a water supply project, as the only feasible means to protect existing structures or as part of a fish or wildlife habitat enhancement project. The area identified for the proposed grandstand additions, however, is an already-paved section between the existing grandstand and the racetrack, such that flow velocities would not be affected.

The Fairgrounds was constructed back in the 1930's on fill placed in historic tidelands. Although this is not the type of development that could be found consistent with the Coastal Act today, the fill operation occurred many decades before the Coastal Act was passed. Because of the history and unique nature of the existing Fairgrounds property, the Commission has in the past approved many permits for development on the filled tidelands. In general, these past permits have authorized improvements within the partially paved, already developed portion of the Fairgrounds north and west of Jimmy Durante Boulevard. For the most part, these past projects have consisted of the replacement of many of the historic buildings, including the original racetrack grandstand, the horse arena and most of the stables. Although the replacement structures have sometimes been larger than the originals, they have been similarly sited and typically intended for the same historic uses.

In summary, the Commission finds that the proposed development would not significantly adversely affect site hydrology, since it would occur within an already-paved area. Although many portions of the Fairgrounds flood under average winter storm conditions, the actual grandstand facilities have not been significantly affected in the past. The Commission finds the proposed development does not represent channelization of the river within the meaning of Coastal Act Section 30236 or development in a hazardous area as addressed by Section 30253 of the Act.

4. Water Quality. The following policy of the Coastal Act addresses this issue and states:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow,

encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The main improved Fairgrounds property drains towards the San Dieguito River, but passes through filtration devices before being discharged. Moreover, the grandstand improvements will occur on already-paved areas, and thus not increase the amount of impermeable surfaces. The unimproved overflow lots, however, are susceptible to increased polluted runoff if any future fairgrounds improvements or events result in additional parking in the SOL and EOL. Since both these sites have berms between the resources and the river, most runoff tends to pond on the surface and percolate into the ground, with only a small amount of runoff actually leaving the site. However, whatever runoff does escape the SOL and EOL winds up in the San Dieguito River. Parking already occurs directly within delineated wetlands during the breeding seasons of sensitive species; allowing an increase in the intensity of use of the fairgrounds that would result in additional use of the overflow lots, would result in degradation of any wetland resources that manage to germinate therein.

The applicant has been able to document that this particular proposal will not increase the intensity of use of fairgrounds facilities, including parking areas. Therefore, the Commission finds the development, as conditioned, consistent with Section 30231 of the Coastal Act. The Commission may not be able to make these findings in future proposals.

5. Visual Resources. The following policy of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

This general area comprises the San Dieguito River Valley and Lagoon. As such, views throughout this area are considered significant, and the retention and enhancement of existing viewpoints and view corridors is required. The project site, however, is located between the existing grandstand facility and the racetrack, and no proposed improvements would extend higher than the existing structures. The proposed improvements would not be prominent from any viewpoint outside the property, including the major coastal access routes of I-5, Via de la Valle, and Camino Santa Fe as well as from the railroad tracks, which cross the river mouth just west of the Fairgrounds. Therefore, the Coastal Commission finds the proposed development is consistent with Section 30251 of the Act. However, the potential use of the SOL or EOL for anything other than parking during the Fair and race meet, has not been analyzed for possible

conflicts with Section 30251 of the Act. In this particular case, since it has been demonstrated that the grandstand improvements will not increase the intensity of use of the overall site, potential increases in use of the overflow lots is not an issue.

6. **Public Access and Recreation/Traffic.** The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies, which address the protection of public access and recreational opportunities, are most applicable to the proposed development:

Section 30210

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby....

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The project site, and indeed the entire Fairgrounds, is located between the first coastal road and the sea (San Dieguito River and Lagoon). The Fairgrounds is relatively near the public beaches of Del Mar and is itself a popular visitor destination, since all of its facilities and events are open to the public. The proposed grandstand improvements could increase the intensity of use of this facility throughout the year, as the additional box seats and dining seating would be permanent and thus available for other events, as

well as the fair and races. However, this particular venue is linear, and not well suited for many types of entertainment, particularly concerts, although the grandstand did host one concert outside the fair in 2002, a Cinco de Mayo event. That was the only time that year that the grandstand itself was used for a non-fair, non-racing activity. Whether this level of use could result in significant increases in traffic on surrounding, already overcrowded surface streets (and on I-5, which generally experiences traffic congestion most of the time and specific delays during summer weekends associated with the fair and horseracing events) is unlikely.

A different type of access concern is that the project will result in the elimination, or reduce the enjoyment of, lower-cost visitor recreational amenities. The location for the proposed addition is an open paved apron where many patrons now stand or sit in lawn chairs. The applicant maintains that the proposed additions will not significantly increase use of the grandstand, but will only provide seating for people now standing. There is, however, a significant monetary difference between carrying in your lawn chair, or just standing up, for the price of a \$5.00 admission ticket, and reserving box seats or dining tables. Based on current pamphlets for the 2003 racing season, and conversations with the applicant's representative, box seats are reserved for an entire season at an approximate price of \$1,400; dining tables are reserved on a first come, first serve daily basis, with costs ranging from \$48.00-\$80.00 per table. These facilities obviously cater to more affluent patrons.

The applicant has submitted a series of exhibits (Exhibits D, E, and F of attached Exhibit #7 demonstrating the capacity of standing room under Commission-approved, existing, and proposed conditions. The applicant has conducted a comparison of how many people can be accommodated in the area between the approved grandstand and the racetrack to demonstrate that the area will actually accommodate fewer people with the proposed project than with either the approved grandstand and retractable bleacher facilities or the unauthorized clubhouse additions and temporary box seats and dining terraces currently in use. The new calculations are based on the premise that seated patrons occupy an average of 15 sq.ft. of area per person, while standing patrons occupy only 9 sq.ft. of area per person. As formal seating is increased, the area left for standing patrons diminishes. Thus, a larger percentage of patrons is calculated at the 15 sq.ft. ratio than at the 9 sq.ft. ratio, resulting in the ability to accommodate fewer people overall. Therefore, construction of the proposed improvements will not increase the intensity of use of the site.

It will, however, reduce the space available for the lowest cost way to view the races, namely standing or bringing one's own chair. Under approved conditions, approximately 9,052 standing patrons can be accommodated; under current conditions, approximately 8,606; and under proposed conditions, approximately 7,205. Based on the applicant's observation that 1,000-5,000 standing patrons are generally in attendance each day, there would still appear to be adequate area for the average number of general admission patrons to continue to view the races for just the price of admission. Moreover, the infield facilities, which are underutilized even during the largest horse racing events and can accommodate approximately 2,250 persons in a 33,750 sq.ft. pavilion seating area

(no fixed seats), are also available for general admission prices. Finally, the additional seating area is proposed in response to the requests of regular racetrack patrons, who have asked for additional, more comfortable seating options.

In summary, the Coastal Commission finds that the specific proposed grandstand improvements will not result in an increase in intensity of use of the site, since fewer persons can be accommodated with the improvements than under current conditions. The Commission further finds that this will not have an adverse impact on lower-cost public recreation, since adequate area is still available for general admission patrons. Therefore, the Commission finds the proposed development consistent with the cited public access policies of the Coastal Act, and with all other Chapter 3 policies addressing public access and recreation.

7. Unpermitted Development. The proposed development will occur on a site where several developments have occurred without the benefit of a coastal development permit. These include the installation of temporary box seats and dining terraces as well as permanent additions to the clubhouse portion of the grandstand facility. The unpermitted seasonal amenities will be replaced with portions of the proposed permanent facilities, and the permanent additions to the clubhouse portion of the grandstand have been incorporated into the subject application for after-the-fact authorization.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. An action by the Commission on this permit application does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

8. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, with the attached special conditions, such a finding can be made.

Portions of the fairgrounds are located within both the Cities of Del Mar and San Diego, which both have fully certified LCPs. The grandstand and SOL are located geographically in Del Mar, and the EOL is located in the Torrey Pines community of San Diego. However, the Fairgrounds is primarily an area of filled tidelands and is thus within the Coastal Commission's area of original jurisdiction. Moreover, the Fairgrounds represent an area of deferred certification in Del Mar's certified LCP. The Commission has coastal development permit authority and the standard of review is Chapter 3 of the Coastal Act. The preceding findings have identified that this specific project is consistent with several applicable Chapter 3 policies. Moreover, the project is consistent with both certified LCPs, as the proposed development does not change any uses from those designated in the LCPs, and will not have adverse impacts on wetland resources.

Therefore, the Commission finds that project approval will not prejudice the ability of Del Mar and San Diego to successfully implement their certified LCPs in this area.

10. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, as conditioned, the project has been found consistent with the biological resource, hydrology, water quality, visual resource and public access policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.